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8
9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION

12 TWIN PEAKS SOFTWARE INC.,

13 Plaintiff,

14 vs.

15 IBM CORPORATION,

16 Defendant.

CASE NO. 3:14-cv-03933-JST

**JOINT STIPULATION AND ~~PROPOSED~~
ORDER TO MODIFY CASE DEADLINES
PURSUANT TO CIVIL L.R. 6-2**

Hon. Jon S. Tigar

STIPULATED MOTION TO MODIFY THE SCHEDULING ORDER

Pursuant to Civil Local Rule 6-2, Plaintiff Twin Peaks Software Inc. (“Twin Peaks”) and Defendant International Business Machines Corporation (“IBM”), by and through their respective counsel of record hereby stipulate and request that the Court enter an order allowing the parties to take depositions relating to claim construction of third parties that have been duly noticed by IBM, Twin Peaks’ 30(b)(6) witness on claim construction issues, and the parties’ respective experts after August 14, 2015, the currently scheduled cut-off for claim construction discovery. (Dkt. No. 29.) In support of this request, the parties state as follows:

WHEREAS, on January 7, 2015, the Court entered its scheduling order in this case, which set deadlines through the December 8, 2015 claim construction hearing, including a claim construction discovery cut-off on August 14, 2015 (Dkt. No. 29);

WHEREAS, pursuant to the scheduling order, IBM timely served third party subpoenas seeking documents and testimony on the prosecuting attorneys of the patent-in-suit and their law firm on July 15, 2015, and a 30(b)(6) deposition notice on Twin Peaks regarding claim construction issues on July 21, 2015;

WHEREAS, counsel for Twin Peaks is representing the prosecuting attorneys of the patent-in-suit and their law firm with regard to IBM’s third party subpoenas;

WHEREAS, counsel for Twin Peaks and counsel for IBM met and conferred regarding the scheduling of the third party prosecuting attorney depositions and the 30(b)(6) deposition of Twin Peaks regarding claim construction, and counsel for both parties agreed that, due to the schedules of both the witnesses and Twin Peaks’ counsel, these depositions would be held after August 14, 2015 but before the September 30, 2015 deadline for Twin Peaks’ opening claim construction brief;

WHEREAS, counsel for both parties have further agreed that IBM will not be precluded or restricted from later deposing any witness Twin Peaks offers in response to IBM’s 30(b)(6) notice on claim construction issues on other 30(b)(6) topics or individually;

1 WHEREAS, both Twin Peaks and IBM also indicated in their Joint Claim Construction
2 and Prehearing Statement Pursuant to Patent Local Rule 4-3 (Dkt. No. 39) that each party would
3 submit expert declarations in support of their claim construction positions;

4 WHEREAS, Twin Peaks and IBM expect to submit expert declarations in support of their
5 claim construction positions with their initial claim construction briefs under the Court's
6 scheduling order (Dkt. No. 29);

7 WHEREAS, counsel for Twin Peaks and counsel for IBM have met and conferred
8 regarding the scheduling of depositions of the parties' respective experts, and counsel for both
9 parties have agreed that these depositions should take place after the submission of their respective
10 declarations;

11 WHEREAS, Twin Peaks and IBM have therefore agreed that IBM would take the
12 deposition of Twin Peaks' claim construction expert after September 30, 2015 but before October
13 21, 2015, and Twin Peaks would take the deposition of IBM's claim construction expert after
14 October 21, 2015 but before October 30, 2015;

15 WHEREAS, as a result of discussions between the parties regarding the aforementioned
16 matters, Twin Peaks and IBM have agreed to jointly request that the Court allow the five
17 depositions identified above to take place after the August 14, 2015 close of claim construction
18 discovery;

19 WHEREAS, this is the second time the parties have sought to make any modifications to
20 the Court's scheduling order and, prior to this motion, IBM and Twin Peaks have made only two
21 requests to extend deadlines in this case (Dkt. Nos. 10 and 33);

22 WHEREAS, the parties' proposed extension for claim construction depositions does not
23 affect the dates of the technology tutorial (Nov. 17, 2015) or the claim construction hearing (Dec.
24 8, 2015), nor does it reduce the time available to the Court to review materials between the
25 conclusion of claim construction briefing (Oct. 30, 2015) and the claim construction hearing. The
26 proposed modifications also do not affect any deadlines for filing or lodging materials with the
27 Court;

28

1 WHEREAS, the parties do not believe the extension sought hereby will prejudice either
2 party or result in undue delay;

3 WHEREAS, counsel for IBM, Andrew J. Bramhall, has submitted a supporting declaration
4 with this stipulation pursuant to Civil Local Rule 6-2(a);

5 NOW THEREFORE, in consideration of the forgoing, IBM and Twin Peaks by and
6 through their undersigned counsel, hereby stipulate and request that the Court allow the parties to
7 conduct the following depositions after the close of claim construction discovery on August 14,
8 2015: (1) the depositions of the two attorneys who prosecuted the patent-in-suit and their law firm;
9 (2) the 30(b)(6) deposition of Twin Peaks regarding claim construction issues; (3) the deposition
10 by IBM of any expert who submits a declaration in support of Twin Peaks' claim construction
11 positions; and (4) the deposition by Twin Peaks of any expert who submits a declaration in
12 support of IBM's claim construction positions.

1 **IT IS SO STIPULATED.**

2 DATED: August 13, 2015

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

4
5 By /s/ Andrew J. Bramhall

Andrew J. Bramhall

6 Attorney for Defendant International Business
7 Machines Corporation

8 DATED: August 13, 2015

HAUSFELD LLP

10 By /s/ Bruce J. Wecker

11 Bruce J. Wecker

12 Attorneys for Plaintiff Twin Peaks Software Inc..

[PROPOSED] ORDER

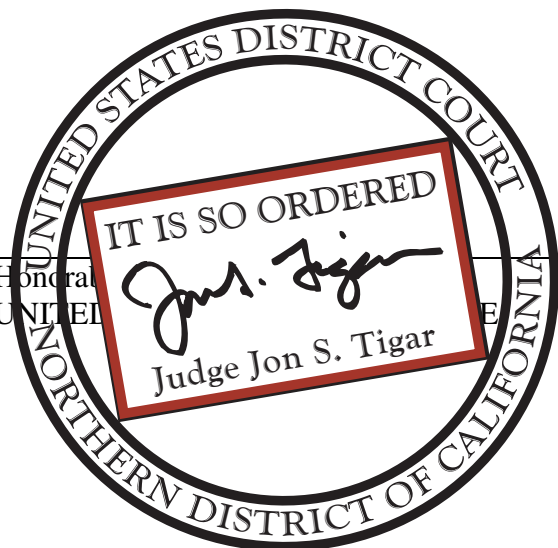
Pursuant to the parties' stipulation, the Court hereby modifies the Scheduling Order to allow the parties to conduct the following claim construction related depositions after the close of claim construction discovery on August 14, 2015: (1) the depositions of the two attorneys who prosecuted the patent-in-suit and their law firm; (2) the 30(b)(6) deposition of Twin Peaks regarding claim construction issues; (3) the deposition by IBM of any expert who submits a declaration in support of Twin Peaks' claim construction positions; and (4) the deposition by Twin Peaks of any expert who submits a declaration in support of IBM's claim construction positions. IBM will not be precluded or restricted from later deposing any witness Twin Peaks offers in response to IBM's 30(b)(6) notice on claim construction issues on other 30(b)(6) topics, or individually.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: August 21 2015

By _____

Honorable
UNITED STATES



FILER'S ATTESTATION

Pursuant to Civil Local Rule 5-1(i) regarding signatures, I, Andrew J. Bramhall, attest that concurrence in the filing of this document has been obtained from each of the other signatories. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: August 13, 2015

By /s/ Andrew J. Bramhall
Andrew J. Bramhall

Attorney for Defendant International Business
Machines Corporation